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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MICHAEL MCCAIN, for Himself and
the Classes He Seeks to Represent,

Plaintiffs,

v.

VENTURA COUNTY FEDERATION
OF COLLEGE TEACHERS, AFT
LOCAL 1828, AFL-CIO; AMERICAN
FEDERATION OF TEACHERS;
VENTURA COUNTY COMMUNITY
COLLEGE DISTRICT,

Defendants.

) Case No: 2:19-cv-00228

)
) **COMPLAINT –**
) **CLASS ACTION**

)
) Constitutional Violation Action
) (42 U.S.C. § 1983), Declaratory
) Judgment, Injunctive Relief

INTRODUCTION

1
2 1. On June 27, 2018, the Supreme Court held it unconstitutional for
3 public-sector unions and employers to collect/deduct union dues or fees from
4 public employees without their affirmative consent and a knowing waiver of their
5 First Amendment rights. *Janus v. AFSCME, Council 31*, 138 S.Ct. 2448, 2486
6 (2018).
7

8
9 2. Plaintiff Michael McCain (“McCain”) is a public employee of the
10 Ventura County Community College District (“Ventura District”) and is
11 employed in a bargaining unit represented by the Ventura County Federation of
12 College Teachers, AFT Local 1828 (“AFT 1828”).
13

14 3. After being notified of McCain’s decision to revoke any prior dues
15 authorization, Ventura District and AFT 1828, directly or indirectly, nonetheless
16 continued to deduct dues from his paychecks, in furtherance of the AFT’s
17 restrictive revocation policies.
18

19 4. AFT 1828 and Ventura District violate the First Amendment rights of
20 McCain and of the proposed class of public employees subject to AFT 1828’s
21 revocation policy, by collecting/deducting union dues from their wages without
22 their knowing consent, thereby severely restricting their exercise of their First
23 Amendment right under *Janus* not to subsidize unions.
24
25

26 5. Defendants maintain and enforce policies, including the dues
27 deduction provisions of the existing collective bargaining agreement between
28

1 AFT 1828 and Ventura District. Under these policies, AFT 1828 and Defendant
 2 American Federation of Teachers (“AFT National”) (collectively called, “the
 3 AFT”) collects, directly or indirectly, union dues from the wages of public
 4 employees, even from those who have notified the AFT of their resignation from
 5 union membership and revocation of their prior dues deduction authorizations.
 6

7
 8 6. McCain brings this civil rights action, pursuant to 42 U.S.C. § 1983
 9 on behalf of himself and all other similarly situated employees, seeking: (a) a
 10 judgment declaring the revocation restrictions and the deduction of union dues or
 11 fees without the employees’ affirmative consent and knowing waiver of First
 12 Amendment rights are unconstitutional and unenforceable; (b) judgment declaring
 13 Article 18.2.A of the collective bargaining agreement, which limits employees’
 14 dues deductions revocation rights to a yearly 15-day window, violates the First
 15 Amendment and is null and void; (c) injunctive relief that prohibits the
 16 maintenance and enforcement of the unconstitutional policies, actions and
 17 provisions, along with compensatory and nominal damages, and (d) costs and
 18 attorneys’ fees under 42 U.S.C. § 1988.
 19
 20
 21

22 JURISDICTION AND VENUE

23
 24 7. This is an action that arises under the Federal Civil Rights Act of
 25 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of
 26 rights, privileges and immunities secured to Plaintiff McCain and all class
 27 members by the Constitution of the United States, particularly the First and
 28

1 Fourteenth Amendments.

2 8. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and
3 28 U.S.C. § 1343.

4
5 9. This action is an actual controversy in which Plaintiff McCain seeks
6 a declaration of his rights under the Constitution of the United States. Pursuant to
7 28 U.S.C. §§ 2201-2202, this Court may declare Plaintiff McCain's rights and
8 grant further necessary and proper relief based thereon, including injunctive relief
9 pursuant to Federal Rule of Civil Procedure 65.

10
11 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
12 the claims arise in this judicial district and division and Defendants operate and do
13 business in this judicial district and division.

14
15 **PARTIES**

16
17 11. Plaintiff Michael McCain resides and works in Ventura County,
18 California.

19
20 12. Defendant Ventura County Federation of College Teachers, AFT
21 Local 1828, AFL-CIO ("AFT 1828"), whose office is located at 816 Camarillo
22 Springs Road, Suite B, Camarillo, California 93012, is a local public sector labor
23 union and an affiliate of Defendant American Federation of Teachers ("AFT
24 National"). AFT 1828 is the exclusive representative of thousands of faculty
25 members throughout the Ventura District and is a party to a collective bargaining
26 agreement with the Ventura County Community College District.
27
28

14. Defendant Ventura County Community College District, whose address is 761 East Daily Drive, Camarillo, California 93010, is a community college district serving Ventura County, California. It is responsible for deducting dues from Plaintiff McCain and other members of the bargaining unit and remitting them to the AFT.

15. Plaintiff Michael McCain is a professor of mathematics and an employee of the Ventura County Community College District.

17. On August 11, 2005, McCain signed the AFT's dues checkoff authorization card that authorized the deduction of union dues from his wages. At this time, McCain was required, as a condition of employment, to either join the union as a full member or pay union forced fees even if he was a nonmember.

///

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1 18. On June 27, 2018, the Supreme Court in *Janus* held forced fee
2 requirements unconstitutional and that public employees had a First Amendment
3 right not to have union dues or fees deducted from their wages without their
4 affirmative consent and knowing waiver of their First Amendment rights. 138
5 S.Ct. at 2486.
6

7 19. After *Janus* was decided, McCain notified the AFT on August 27,
8 2018, in writing, of his resignation as a member of the AFT and that he did not
9 consent to any deduction of union dues or fees from his wages. The AFT
10 responded in writing denying his request.
11

12 20. The AFT's checkoff card signed by McCain states:
13

14 "I hereby authorize the Ventura County Community
15 College District to withhold from my warrant the
16 constitutional monthly dues of the Ventura County
17 Federation of College Teachers, AFT, Local 1828. I
18 understand this authorization will remain in effect until
19 further notice unless changed or terminated by me on
20 thirty days' notice to the District Payroll Office and the
21 Ventura County Federation of College Teachers."
22

23 21. Nevertheless, Article 18.2.A of the collective bargaining agreement
24 between the AFT and the Ventura District states a more restrictive revocation
25 policy:
26

27 "Any employee who is paying dues may stop making
28 those payments by giving written notice to the Federation
during the period not less than thirty (30) and not more
than forty-five (45) days before: 1.) the annual
anniversary date of the employee's hire date or 2.) the
date of termination of the applicable contract between the

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1 employer and the Federation, whichever occurs sooner,
 2 unless the Federation and the employer are in subsequent
 3 negotiations on a successor contract. The employer will
 4 honor the employee's check-off authorizations unless
 5 he/she has revoked that authorization in writing during
 6 the window period as authorized by the Federation,
 7 irrespective of the employee's membership in the
 8 Federation. Any faculty member who is not a member of
 9 the Federation or who does not make application for
 10 membership within thirty (30) days of the effective date
 of this Article or within thirty (30) days of the
 commencement of assigned duties shall pay a service fee
 to the Federation. At any time, a faculty member may
 become a Federation member..."¹

11 22. Neither the AFT's dues checkoff authorization nor the collective
 12 bargaining agreement contain language that informs potential signatories: (1) that
 13 they have a First Amendment right not to subsidize the union and its speech; or
 14 (2) that, by signing the cards, they are waiving their First Amendment right to not
 15 subsidize the AFT and its speech.
 16

17 23. The AFT's restrictive revocation policy is enforced by the Ventura
 18 District that, in coordination with the AFT and at its behest, deducts union dues
 19 from employees' wages and remits those monies to the AFT pursuant to dues
 20 deduction agreements and dues checkoff provisions. The AFT and Ventura
 21 District have failed and refused to terminate their restrictive revocation policy
 22
 23
 24

25
 26
 27 ¹ 2016-2019 Ventura County Community College District/Ventura County Federation of College teachers AFT
 local 1828, AFL-CIO Collective Bargaining Agreement Article 18.2.A. Available at:
 28 https://www.vcccd.edu/sites/default/files/files/departments/human-resources/contracts/AFT/2016-2019-aftagmt-07.10.18-final-indexed_0.pdf (last visited November 29, 2018).

1 after McCain's notification of revocation of consent for such deductions.

2 24. Pursuant to its restrictive revocation policy, Defendants continued to
3 collect and deduct union dues from McCain and other employees after they
4 notified the AFT that they did not consent to paying union dues or forced fees.
5 Unless enjoined from so doing, the AFT and the Ventura District will continue to
6 collect/deduct union dues from employees.
7

8 25. On information and belief, Defendants have enforced, and will
9 continue to enforce, the restrictive revocation policy by collecting and deducting
10 union dues from employees who notified the AFT that they do not consent to
11 paying union dues or fees.
12

13 CLASS ACTION ALLEGATIONS

14 26. Plaintiff McCain brings this case as a class action pursuant to Federal
15 Rules of Civil Procedure 23(b)(1)(A) and (b)(2), and, alternatively, 23(b)(3), for
16 himself and for all others similarly situated, and any subclasses deemed
17 appropriate by this Court, as described in the following classes:
18

19 27. Plaintiff McCain is the class representative of the "Revocation
20 Class", which consists of individuals: (a) who are Ventura County Community
21 College District employees exclusively represented by the AFT or one of its
22 affiliates for purposes of collective bargaining, (b) who resigned union
23 membership and revoked their consent to the payment of any union dues, and (c)
24 who had or are still having union dues deducted from their wages in spite of such
25
26
27
28

1 resignation and revocation request. The class includes everyone who comes
2 within the class definition at any time from the time of resignation from union
3 membership and revocation of consent to the payment of dues.
4

5 28. Plaintiff McCain is the class representative of the "Full Dues Class",
6 which consists of Ventura County Community College District employees
7 exclusively represented by the AFT or one of its affiliates for purposes of
8 collective bargaining who are subject or become subject to Defendants' restrictive
9 revocation policy.
10

11 29. Upon information and belief, there are hundreds, if not thousands, of
12 class members in both classes described above. Their number is so numerous that
13 joinder is impractical. The precise number of class members is unknown to
14 Plaintiff McCain, but it is clear that the number greatly exceeds the number to
15 make joinder feasible.
16

17 30. There are questions of law and fact common to all Revocation and
18 Full Dues class members. Factually, all have had union dues deducted from their
19 wages and are or were subject to the same or similar restrictive revocation policy.
20 For McCain and Full Dues class members, the dispositive legal question is
21 whether Defendants' maintenance and enforcement of their restrictive revocation
22 policy violates the First Amendment. For McCain and Revocation class members,
23 the dispositive legal question is whether the deduction and collection of full union
24 dues from employees' wages violates their rights under the First Amendment.
25
26
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28

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1 31. McCain's claims and defenses are typical of the Full Dues class
2 members' claims because they concern whether Defendants' restrictive revocation
3 policy unlawfully restricts employees' First Amendment rights.
4

5 32. McCain's claims and defenses are typical of the Revocation class
6 members' claims because Defendants have seized and collected or are currently
7 seizing and collecting dues from McCain and Revocation class members in
8 violation of their First Amendment right to not subsidize union activity without
9 their affirmative consent and known waiver of that First Amendment right, as
10 recognized by the U.S. Supreme Court in *Janus v. AFSCME* on June 27, 2018.
11

12 33. Plaintiff McCain can fairly and adequately represent the interests of
13 both classes and has no conflict with other, similarly situated class members.
14 McCain has no interest antagonistic to others who have been subjected by
15 Defendants to the aforementioned restrictive revocation policy and union dues
16 deductions scheme.
17

18 34. Plaintiff McCain's counsel has considerable experience handling
19 class actions and the types of claims asserted in the instant complaint. Moreover,
20 Plaintiff McCain's counsel is knowledgeable in the applicable law and possesses
21 the necessary resources for committing to representing the class.
22

23 35. The Revocation Class identified above can be maintained under
24 Federal Rule of Civil Procedure 23(b)(1)(A) because Defendants' duty to cease
25 the union dues deductions and collections applies equally to McCain and class
26
27
28

1 members, and the prosecution of separate actions by individual class members
2 would create a risk of inconsistent or varying adjudications, which would establish
3 incompatible standards of conduct for Defendants.
4

5 36. The Revocation Class can be maintained under Federal Rule of Civil
6 Procedure 23(b)(1)(B) because an adjudication determining the constitutionality
7 of union dues deductions in the aforementioned circumstances as to one of the
8 class members, as a practical matter, will be dispositive of the interests of all class
9 members or would substantially impair or impede the other class members' ability
10 to protect their interests.
11

12 37. The Revocation Class can be maintained under Federal Rule of Civil
13 Procedure 23(b)(2) because Defendants have acted to deprive McCain and class
14 members of their constitutional rights on grounds generally applicable to all,
15 thereby making declaratory, injunctive, and other equitable relief appropriate with
16 regard to the class as a whole.
17

18 38. Alternatively, the Revocation Class can be maintained under Federal
19 Rule of Civil Procedure 23(b)(3) because questions of law or fact common to the
20 members of the class predominate over any questions affecting only individual
21 members, in that the important and controlling questions of law or fact are
22 common to all class members, i.e., whether the aforementioned dues deductions
23 violate their First Amendment rights and whether the restrictive revocation policy
24 of the CBA constitute a valid waiver of a constitutional right when it was ratified
25
26
27
28

1 before the right not to subsidize union activity was recognized by the U.S.
2 Supreme Court in *Janus v. AFSCME* on June 27, 2018.

3
4 39. The class action is superior to other available methods for the fair and
5 efficient adjudication of the controversy, inasmuch as the individual respective
6 class members are deprived of the same rights by Defendants' actions, differing
7 only in the amount of money deducted. This fact is known to Defendants and
8 easily calculated from Defendants' business records. The limited amount of
9 money involved in the case of each individual's claim would make it burdensome
10 for the respective class members to maintain separate actions.
11

12
13 40. The Full Dues Class can be maintained under Federal Rule of Civil
14 Procedure 23(b)(1)(A) because separate class actions by Full Dues class members
15 could risk inconsistent adjudications that would establish incompatible standards
16 of conduct for Defendants.
17

18 41. The Full Dues Class can be maintained under Federal Rule of Civil
19 Procedure 23(b)(1)(B) because an adjudication determining the constitutionality
20 of Defendants' maintenance of their restrictive revocation policy will, as a
21 practical matter, be dispositive of the interests of all Full Dues class members or
22 substantially impair or impede their ability to exercise their First Amendment
23 rights.
24

25
26 42. The Full Dues Class can be maintained under Federal Rule of Civil
27 Procedure 23(b)(2) because by maintaining and enforcing their restrictive
28

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1 revocation policy, Defendants have acted or refused to act on grounds that apply
2 generally to members of the Full Dues Class, so that final injunctive or declaratory
3 relief is appropriate for the Full Dues class as a whole.
4

5 **CAUSES OF ACTION**

6 43. Plaintiff McCain re-alleges and incorporates by reference the
7 paragraphs set forth above in this Complaint.
8

9 44. McCain is suing Defendants under 42 U.S.C. § 1983 and the
10 Declaratory Judgment Act, 28 U.S.C. § 2201, on behalf of himself and the
11 requested class.
12

13 **COUNT I**

14 **(Full dues deductions without consent and waiver of First Amendment rights**
15 **violate 42 U.S.C. § 1983 and the First and Fourteenth Amendments)**

16 45. Defendants' maintenance and enforcement of its restrictive
17 revocation policies and deduction of union dues from the wages of McCain and
18 Revocation class members without the affirmative authorization and knowing
19 waiver of First Amendment rights violates McCain's and class members' First
20 Amendment rights to free speech and association, as secured against state
21 infringement by the Fourteenth Amendment to the United States Constitution and
22 42 U.S.C. § 1983.
23
24

25 46. Furthermore, Defendants' continued deduction and collection of
26 union dues in spite of the decision to revoke any prior dues authorization violates
27
28

1 McCain's and Revocation Class members' First Amendment rights to free speech
2 and association, as secured against state infringement by the Fourteenth
3 Amendment to the United States Constitution and 42 U.S.C. § 1983.
4

5 47. The U.S. Supreme Court held that under the First Amendment,
6 "[n]either an agency fee nor any other payment to the union may be deducted
7 from a nonmember's wages, nor may any other attempt be made to collect such
8 payment, unless the employee affirmatively consents to pay." *Janus v. AFSCME*,
9 *Council 31*, 138 S.Ct. at 2486.
10

11 48. The U.S. Supreme Court in *Janus* further held that an individual's
12 consent to pay union dues requires a waiver of First Amendment rights. *Id.* In
13 order to be effective, a waiver of First Amendment rights must be knowingly,
14 clearly and voluntarily made.
15

16 49. Defendants did not obtain from McCain, Revocation Class members
17 or Full Dues Class members a valid waiver of their First Amendment rights under
18 *Janus* prior to the deduction of dues because, among other reasons, the AFT's
19 dues authorization form and Defendants' more restrictive revocation policy in the
20 CBA do not clearly inform employees that they have First Amendment rights not
21 to financially support an exclusive representative. Nor does the AFT's dues
22 authorization form or Defendants' CBA expressly state that the employee agrees
23 to waive or restrict his/her First Amendment rights to a fifteen (15) day window
24 period.
25
26
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1 50. Plaintiff McCain and Revocation Class members are suffering the
2 irreparable harm and injury inherent in a violation of First Amendment rights, for
3 which there is no adequate remedy at law, as a result of being subjected to
4 Defendants' restrictive revocation policies, provisions and continued deductions
5 of union dues.
6

7
8 **COUNT II**

9 **(Defendants' Revocation Policy Deprives Plaintiff McCain, Full Dues Class
10 Members and Revocation Class Members of their First Amendment Rights)**

11 51. Defendants' restrictive revocation policy prohibits or prohibited
12 McCain, Full Dues Class Members and Revocation Class Members from
13 exercising their First Amendment rights under *Janus* to not subsidize a labor
14 union and its speech.
15

16 52. Defendants did not obtain from McCain, Full Dues Class members,
17 or Revocation Class members a valid waiver of their First Amendment rights
18 under *Janus* because, among other reasons, the AFT's dues authorization form
19 and Defendants' more restrictive revocation policy in the CBA do not clearly
20 inform employees that they have a First Amendment right not to financially
21 support an exclusive representative. Nor do they expressly state that the employee
22 agrees to waive or restrict his/her exercise of First Amendment rights to a fifteen
23 (15) day window period.
24
25

26
27 ///

53. Defendants' restrictive revocation policy caused and continues to cause the deduction and collection of union dues from McCain, Full Dues Class members and Revocation Class Members who do not consent to paying union dues or having union dues deducted from their wages.

54. Defendants' maintenance and enforcement of their restrictive revocation policy deprives McCain, Full Dues Class members and Revocation Class members of their First Amendment rights to free speech and association, as secured against infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

Wherefore, Plaintiff McCain requests that this Court:

A. Class Action: Enter an order, as soon as practicable, certifying this case as a class action, certifying the classes as defined in the complaint, certifying Plaintiff McCain as class representative of both classes, and appointing Plaintiff McCain's counsel as class counsel for the classes;

B. Declaratory Judgment: (i) Enter a declaratory judgment that the restrictive revocation policies put in place by Defendants are unconstitutional under the First Amendment, as secured against State infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, and unenforceable and (ii) Enter a declaratory judgment that Defendants are violating McCain's and Revocation Class members' First Amendment rights as secured against State infringement by

1 the Fourteenth Amendment and 42 U.S.C. § 1983, by collecting and deducting
 2 union dues from public employees who do not consent to paying union dues or
 3 who notify the union that they no longer consent to paying union dues.
 4

5 **C. Injunctive Relief:** (i) Permanently enjoin Defendants, along with
 6 their officers, agents, servants, employees, attorneys, and any other person or
 7 entity in active concert or participation with them, from maintaining and enforcing
 8 their restrictive revocation policies and from collecting and deducting union dues
 9 from Plaintiff and other public employees who notify their union that they do not
 10 consent to paying union dues; (ii) Permanently enjoin Defendant Ventura County
 11 Community College District from carrying out dues deductions —pursuant to the
 12 AFT's revocation policies— from Plaintiff's and Revocation Class members'
 13 paychecks; (iii) Order Defendants to reimburse McCain and Revocation Class
 14 members the amount of money equal to the unlawfully and improperly withheld
 15 union dues deducted and collected up to two years prior to the commencement of
 16 this action, plus applicable interest, and (iv) permanently enjoin Defendants and
 17 all of their officers, agents, servants, employees, attorneys, and any other person
 18 or entity in active concert or participation with them, from enforcing Article
 19 18.2.A of the collective bargaining agreement.
 20

21 **D. Damages:** (i) Enter a judgment awarding McCain and Revocation
 22 Class members compensatory damages, refunds or restitution in the amount of
 23 union dues deducted or required to be paid, directly or indirectly, to the Union
 24

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1 from their wages without their affirmative and knowing consent; (ii) Enter a
2 judgment awarding nominal damages to Full Dues Class members.

3
4 **E. Costs and Attorneys' Fees:** Award Plaintiff McCain and all class
5 members their costs and reasonable attorneys' fees pursuant to the Civil Rights
6 Attorneys' Fees Award Act of 1976, 42 U.S.C. § 1988.

7
8 **F. Other Relief:** (i) Require the AFT to provide Plaintiff McCain and
9 all class members with written notice that its revocation policies are
10 unconstitutional and unenforceable and that they can exercise their First
11 Amendment right to not pay union dues without their consent at any time; and (ii)
12 Grant other and additional relief as the Court may deem just and proper.

13
14 **RESPECTFULLY SUBMITTED.**

15
16 Dated: January 9, 2019

SMITH & MYERS LLP

17
18 By /s/ Thomas Myers
19 Thomas Myers

20 Ángel J. Valencia
21 (*Pro Hac Vice* to be applied for)
22 Milton L. Chappell
23 (*Pro Hac Vice* to be applied for)

24 Attorneys for Plaintiff Michael McCain
25 and the Classes He Seeks to Represent
26
27
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Complaints and Other Initiating Documents

[2:19-cv-00228 McCain v. Ventura County Federation of College Teachers, AFT Local 1828 et al](#)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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Filer: Michael McCain

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COMPLAINT Receipt No: 0973-23023671 - Fee: \$400, filed by Plaintiff and the Classes He Seeks to Represent Michael McCain. (Attorney Thomas O Myers added to party Michael McCain(pty:pla))(Myers, Thomas)

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